

Additional Public Comment submitted during the public comment period on Phase I of the Butte Health Study.

Submitted by:
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In an advertisement in the *Montana Standard* announcing the release of the Draft Final Superfund Health Study, the statement is made that that final study report will included a responsiveness summary prepared by members of the Health Study Working Group.

While the Health Study Working Group should be involved in preparing the responsiveness summary, this responsiveness summary is the responsibility of the EPA and must be developed in accordance with EPA policy guidances.

Delegatus non potest delgare. ("A delegate cannot delegate; an agent cannot delegate his functions to a subagent without the knowledge and consent of the principal; the person to whom an office or duty is delegated cannot lawfully devolve the duty on another. . . . " *Black's Law Dictionary*, 5th Edition)

This Health Study is being conducted pursuant to an EPA unilateral order. Ultimate authority for the responsiveness summary, which is part of the Health Study, cannot be delegated by EPA to any other authority. EPA's responsibility is inalienable. The responsibility for the responsiveness summary stays with EPA.

My reason for elaborating the above is that, in terms of the design, development and conduct of the Butte Superfund Health Study, as mandated under the Unilateral Administrative Order under an effective date of September 6, 2011, ultimate supervisory authority for the conduct of all aspects of the Health Study, including the development of the responsiveness summary, remains with the EPA. While the EPA may have delegated to local government the task of designing, developing and implementing the Health Study, the EPA is still responsible for the outcome of the Health Study, including the responsiveness summary. Not only must EPA retain ultimate authority over the development of the responsiveness summary, that responsiveness summary must conform to EPA policy guidances.

Therefore, I request that the responsiveness summary, in conformity with EPA policy, must be more than just a cursory response to public input. This public input must be taken seriously and be accorded a full and complete response.

The responsiveness summary must conform to the following EPA Guidance:

EPA prepares responsiveness summaries to comments, criticisms, and new data received primarily during Public Comment Periods. . .” The comments include oral or written citizen input submitted at public meetings, public hearings, or during public comment periods, as well as major issues and concerns raised during the various phases of the program. Responsiveness summaries provide a comprehensive response to all major comments and concerns raised by the community, including PRPs. They briefly summarize major community concerns and document EPA’s response to the comments. Responsiveness summaries are intended to be concise and complete reports that the public can understand. Responsiveness summaries are used by EPA and the public. Members of the public may use the document to determine how their comments were considered during the decision making process.

At the conclusion of the 30-day public comment period on the Proposed Plan, NCP at 40 CFR § 300.430(f)(3)(F) requires that EPA “[p]repare a written summary of significant comments, criticisms, and new relevant information submitted during the public comment period and the lead agency response to each issue.”

As discussed in the ROD guidance and OSWER Directive “Superfund Responsiveness Summaries,” responsiveness summaries contain four sections: overview; background on community involvement; summary of comments received and agency responses (topics of comments); and remedial design/remedial action concerns.

Typically, community relations staff has the responsibility of coordinating the development of a responsiveness summary. EPA’s technical and legal staff may be needed to respond to some

Whenever possible, the response to a “yes” or “no” question should begin with a “yes” or “no” before providing a detailed explanation; or, if this is not possible, then a statement to that effect should be made at the beginning of that answer. Responses should be clear, accurate, and written by the RPM and/or the Community Relations Coordinator.

Comments should reflect a genuine attempt to address citizen's questions and concerns, and not simply re-assert the correctness of EPA's determination.

Last Updated

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Reference also: EPA 540-R-96-031; OSWER 9200.1-23P; PB98-963241

My point is that, since EPA has stated that there will be a responsiveness summary prepared in response to public comments on Phase I of the Health Study, that responsiveness summary must be developed in accordance with EPA policy governing the preparation of responsiveness summaries. I call for EPA to prepare a thorough and complete response to public input.